

JFM:IJ  
F.#2011R01411

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

MAIR FAIBISH,

Defendant.

- - - - - X

I N D I C T M E N T

Cr. No. \_\_\_\_\_  
(T. 15, U.S.C., § 78ff(a);  
T. 18, U.S.C.,  
§§ 981(a)(1)(C),  
982(a)(2)(A), 1344, 1349,  
2 and 3551 et seq.;  
T. 21, U.S.C., § 853(p);  
T. 28, U.S.C., § 2461(c))

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless  
otherwise indicated:

I. Background

1. Synergy Brands Inc. was a holding company based in Syosset, New York, that operated principally through a wholly owned subsidiary, PHS Group Inc. (collectively, "Synergy"). Synergy and its subsidiaries purported to manufacture and distribute baking mixes, spices, packaged meals and wholesale groceries throughout the United States.

2. From approximately June 29, 1998 through October 2, 2008, Synergy was a publicly traded corporation whose shares traded on the National Association of Securities Dealers Automated Quotations ("NASDAQ") under the ticker symbol "SYBR."

The NASDAQ suspended trading in SYBR on October 2, 2008 and delisted it on December 5, 2008. From approximately October 2, 2008 through all times relevant to this Indictment, Synergy was a publicly traded corporation whose shares traded on the over-the-counter exchange under the ticker symbol "SYBRQ." From June 29, 1998 through all times relevant to this Indictment, Synergy's common stock was registered with the United States Securities and Exchange Commission (the "SEC") under Section 12 of the Securities Exchange Act of 1934.

3. As a public company, Synergy was required to comply with the rules and regulations of the SEC. The SEC's rules and regulations were designed to protect members of the investing public by, among other things, ensuring that a company's financial information was accurately recorded and disclosed to the investing public.

4. Under the SEC's rules and regulations, Synergy and its officers were required to, among other things, (a) make and keep books, records and accounts that, in reasonable detail, fairly and accurately reflected Synergy's business transactions, including its earnings, revenue and expenses; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that Synergy's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting

Principles ("GAAP"); and (c) file with the SEC quarterly reports (on Form 10-Q) that included financial statements that presented Synergy's financial condition and the results of its business operations in accordance with GAAP.

5. The defendant MAIR FAIBISH was the Chief Executive Officer of Synergy. FAIBISH and his co-conspirators controlled other corporations, including Bektrom Industries, Libra Marketing, Amton Inc., Gran Reserve Corp. and G & R Auto.

6. Loretta Flour, Loretta Foods, Ontario Ltd., New Durham Trading, and NDT Food Service, among other related companies, were corporations based in Canada ("the Canadian companies") that manufactured and distributed food products to Synergy and others.

## II. The Synergy Check Kiting Scheme

7. "Check kiting" is a scheme in which: (1) checks that are not backed by sufficient funds are deposited into an account (the "Deposited Checks"); (2) the Deposited Checks are immediately credited to the account, thus creating an artificially inflated balance; and (3) the account holder then writes checks off the artificially inflated balance while knowing that the Deposited Checks ultimately will not clear.

8. In or about and between January 2008 and May 2010, the defendant MAIR FAIBISH engaged in an extensive check kiting scheme. He caused checks totaling approximately \$750 million to

be written to the Canadian companies in Canada against accounts held by Synergy and related companies in the United States. FAIBISH did so while knowing that the accounts against which he caused these checks to be written did not contain sufficient funds to cover the checks (the "Bad Checks").

9. It was a part of the scheme that the Canadian companies then deposited the Bad Checks into their respective accounts and received credit in their accounts for the amounts of the Bad Checks.

10. It was a further part of the scheme that the defendant MAIR FAIBISH then received approximately \$750 million in checks from the Canadian companies, corresponding to the Bad Checks he had sent to the Canadian companies. FAIBISH deposited, and caused others to deposit, these checks into accounts held by Synergy and related companies in the United States.

11. Because the banks Synergy and the related companies used would make deposited funds immediately available for withdrawal, the defendant MAIR FAIBISH's scheme artificially inflated the account balances of Synergy and related companies. FAIBISH used those artificially inflated balances to increase Synergy's and related companies' cash flow by at least approximately \$26 million, and create millions of dollars in fictitious accounts receivables and revenues.

III. False Statements to the SEC

12. On or about August 14, 2008, the defendant MAIR FAIBISH and others filed a Form 10-Q report with the SEC for Synergy for the second quarter of 2008, which contained the following material false statements and omissions: (1) that Synergy had approximately \$44,500,000 in sales, when at least approximately 20 percent of those sales consisted of fictitious sales; (2) that Synergy had approximately \$40,000,000 in cost of goods sold, when at least approximately 20 percent of those cost of goods sold consisted of fictitious cost of goods sold; and (3) recognition of approximately \$1,500,000 in "prepaid expenses," when at least approximately 25 percent of those prepaid expenses consisted of fictitious prepaid expenses.

COUNT ONE

(Securities Fraud and Bank Fraud Conspiracy)

13. The allegations contained in paragraphs 1 through 12 are repeated and incorporated as though fully set forth in this paragraph.

14. In or about and between January 2008 and May 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant MAIR FAIBISH, together with others, did knowingly and intentionally conspire: (a) to execute a scheme and artifice to defraud one or more persons in connection with securities of issuers with a class of securities registered under section 12 of the Securities Exchange

Act of 1934, contrary to Title 18, United States Code, Section 1348(1); and (b) to execute a scheme and artifice to defraud Signature Bank and Capital One Bank, both financial institutions, the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets and other property owned by, and under the custody and control of those financial institutions by means of materially false and fraudulent pretenses, representations and promises, contrary to Title 18, United States Code, Section 1344.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO  
(Bank Fraud)

15. The allegations contained in paragraphs 1 through 12 are repeated and incorporated as though fully set forth in this paragraph.

16. In or about and between January 2008 and May 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant MAIR FAIBISH, together with others, did knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud Signature Bank and Capital One Bank, both financial institutions, the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets and other property owned by, and under the custody and control of

those financial institutions by means of materially false and fraudulent pretenses, representations and promises.

(Title 18, United States Code, Sections 1344, 2 and 3551 et seq.)

COUNT THREE

(False Statement in Report Required to be Filed with the SEC)

17. The allegations contained in paragraphs 1 through 12 are repeated and incorporated as though fully set forth in this paragraph.

18. In or about and between March 2008 and August 2008, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant MAIR FAIBISH, together with others, did knowingly and willfully make and cause to be made statements in a report and document required to be filed under the Securities Exchange Act of 1934, Title 15, United States Code, Sections 78a et seq., and the rules and regulations promulgated thereunder, which statements were false and misleading with respect to material facts, in that the defendant filed and caused to be filed with the SEC Synergy's quarterly report on Form 10-Q for the quarter ending June 30, 2008, which, as the defendant then knew, misstated the following:

(a) A statement that sales were approximately \$44,500,000 when, in fact, approximately 20 percent of those sales consisted of fictitious sales;

(b) A statement that the cost of goods sold was approximately \$40,000,000 when, in fact, approximately 20 percent of those cost of goods sold consisted of fictitious cost of goods sold; and

(c) A statement recognizing approximately \$1,500,000 in "prepaid expenses" when, in fact, approximately 25 percent of those prepaid expenses consisted of fictitious prepaid expenses.

(Title 15, United States Code, Section 78ff(a) and Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION AS TO COUNTS ONE AND THREE

19. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged in Counts One or Three, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), of any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of such offenses, and all property traceable to such property, including but not limited to a sum of money representing the amount of proceeds obtained as a result of the offense.

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:



(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value;  
or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

CRIMINAL FORFEITURE ALLEGATION AS TO COUNT TWO

21. The United States hereby gives notice to the defendant that, upon his conviction of the offense charged in Count Two, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(2)(A), of any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense, including but not limited to a sum of money representing the amount of proceeds obtained as a result of the offense.

22. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value;  
or

(e) has been commingled with other property which cannot be divided without difficulty;

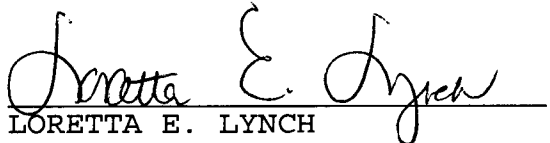
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any

other property of the defendant up to the value of the  
forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 982(a)(2)(A);  
Title 21, United States Code, Section 853(p))

A TRUE BILL

  
FOREPERSON

  
LORETTA E. LYNCH  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

F #2011R01411  
FORM DBD-34  
JUN. 85

No.

**UNITED STATES DISTRICT COURT**

*EASTERN District of NEW YORK*

**THE UNITED STATES OF AMERICA**

vs.

**MAIR FAIBISH,**

Defendant.

**INDICTMENT**

(T. 15, U.S.C., § 78ff(a); T. 18, U.S.C., §§ 981(a)(1)(C), 982(a)(2)(A), 1344, 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

*A true bill.*

*[Signature]*  
Foreman

Filed in open court this \_\_\_\_\_ day,

of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

Clerk

Bail, \$ \_\_\_\_\_

*Ilene Jaroslaw, Assistant United States Attorney (718-254-6236)*